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# **Circular Letter**

**TO: ALL STATE AGENCIES, CONTRACTING AGENCIES, AND SCHOOL EMPLOYERS**

**SUBJECT: CALIFORNIA NATIONAL GUARD MEMBERSHIP – AUTHORIZED MEMBERSHIP IN CALPERS**

On October 9, 2007, Senate Bill 14 (Negrete-McLeod), Chapter 355, Statutes of 2007, was signed into law, and took effect on January 1, 2008.

This letter provides some general information about the provisions of this bill and its implementation by the California Public Employees' Retirement System (CalPERS).

## **OVERVIEW**

Prior to the passage of Senate Bill (SB) 14, members of the California National Guard placed on full-time active duty with the office of the Adjutant General were eligible for CalPERS membership, as were employees of the Military Department who were state civil service employees. SB 14 does not affect the status of such persons and those employees will continue to fall under the same CalPERS eligibility rules that other members do.

SB 14 extended the right to “**elect**” CalPERS membership to California National Guard (CNG) members who did not meet the previous requirements for CalPERS membership. Such “part-time” CNG members typically serve one weekend of training per month, as well as fifteen days per year, pursuant to Title 32 of the United States Code. In addition to this, they may also be called to the following types of active duty:

- Title 10: Federally-mandated worldwide training/service under the command and control of the President, such as serving in Iraq or Afghanistan.
- Title 32: Federally-authorized domestic U.S. missions with the California National Guard under the command and control of the Governor, such as post-9/11 airport security; Southwest Border security; Hurricane Katrina response, etc.
- Emergency State Active Duty (ESAD): Service in the state under the command and control of the Governor, such as during forest fires; floods; search and rescue operations; civil disturbances, etc.

**OVERVIEW OF RIGHTS AND OBLIGATIONS PROVIDED BY SB 14:**

(All references are to the Government Code.)

SB 14 created a new, unique CalPERS membership category known as “National Guard members” (20380.5). Although many of the Public Employees’ Retirement Law provisions applicable to “state members” will apply to National Guard members, there are some significant differences. (20380) Some of the benefits and limitations for National Guard members are summarized below:

1. A member of the California National Guard (i.e., an individual who has not been discharged, or entered into the State Military Reserve) may **elect** to become a member of CalPERS as a “National Guard member” by filing a written election with the CalPERS Board. (20326)
2. A National Guard member is required to pay both the **employee’s** share and the **employer’s** share of CalPERS contributions (20772.5). The current formula for such contributions is shown below:

**Employee share:** (Gross Monthly National Guard Earnings - \$513) x 5%\*

**Employer share:** Gross Monthly National Guard Earnings x 16.663%\*

\* NOTE: The employee rate is set by statute; the employer rate changes on a fiscal year basis.

EXAMPLE: Employee gross monthly earnings are \$1000 in a month

**Employee share:** (\$1000 - \$513) x 5% = \$ 24.35

**Employer share:** \$1000 x 16.663% = \$166.63

Total monthly contribution: \$190.98

3. Service credit for National Guard members is accumulated on the basis of **215 days = 1 year** (20966.5). A National Guard member who works one weekend per month and two weeks per year would receive 4 days (“points”) of service for each training weekend and 15 days for their annual training commitment. Such a typical Guard member would accumulate 63 days (4 days/points per month times 12 months, plus 15 days) of service, or 0.293 years (63 ÷ 215) of CalPERS service credit per fiscal year. A National Guard member serving Title 32 service or ESAD may accumulate additional days of service based on actual duty served. (A minimum of 5.000 years of service credit is required in order to qualify to retire from CalPERS at age 50 or older. (21060)
4. National Guard members are able to purchase service credit for previous California National Guard (Title 32 and ESAD) and federal (Title 10) National Guard service as “public service.” (21029.5). The National Guard member is required to pay the entire “present value” of the future projected increase in his/her benefit from this service credit purchase, thereby offsetting any employer liability. (21029.5)
5. National Guard members will have a one-time opportunity to prospectively cancel their election of membership, even if they remain in service with the California National Guard and continue to be a CalPERS member. This will have the effect of halting their obligation to pay further retirement contributions (except where an election has been made to purchase prior service because such elections will not be affected by this prospective cancellation).

Any contributions already made to CalPERS will remain in the system and will continue to accumulate interest. (20327) This cancellation provision remains operative so long as the National Guard members are required to pay the employer portion of contributions as a condition of membership in this system. (20327)

## **BENEFITS OF CALPERS MEMBERSHIP**

### **Some of the benefits that are available to National Guard members include:**

- Contributions on deposit earn interest. (The current interest crediting rate is 6% annually.)
- Retirement benefits are provided under the 2% @ 55 state miscellaneous retirement formula which provides benefits upon reaching a minimum age of 50 so long as the member has at least 5.000 years of CalPERS service credit.
- Disability retirement benefits, if credited with at least 5.000 years of CalPERS service credit. (There is no minimum age requirement for disability retirement.)
- Death benefits, for eligible spouse/survivor or beneficiary.

Our CalPERS On-Line website ([www.calpers.ca.gov](http://www.calpers.ca.gov)) contains general information about these benefits, and allows the National Guard member to calculate potential future retirement benefits under the state miscellaneous 2% @ 55 retirement formula.

### **LIMITATIONS:**

The following are some of the limitations affecting National Guard members:

- National Guard members are specifically excluded from CalPERS health benefits for their CNG service. (22760, 22772 and 22830) If a member of the CNG has another CalPERS-qualified position, this exclusion from coverage does not apply to the additional position. CNG service may **not** be used for any qualification or "vesting" purposes for health and dental benefits. (22772(b)(2) and 22875)
- Contributions to CalPERS must be made on an **after-tax** (i.e., non-tax deferred) basis.
- Once membership has been elected, contributions may not be withdrawn, unless and until the member is permanently separated from all CalPERS-covered employment, and so long as the member is not an active member of another publicly funded retirement system that has reciprocity with CalPERS (20731).

- “Final compensation”<sup>1</sup> for National Guard service will be based solely on salaries earned while in National Guard service and will be determined using the highest average annual compensation that was earned while rendering service with the California National Guard. (20039.5) Salaries earned while a member of a reciprocal retirement system **cannot** be used to compute benefits for National Guard service. (20039.5)
- If a National Guard member is late in paying his or her monthly CalPERS contributions, interest may be charged. A National Guard member may not be credited with service credit until contributions, and any accrued interest due, is paid in full. (20772.5)

Existing CalPERS law excludes overtime from reportable compensation and overtime cannot be used to determine retirement benefits.<sup>2</sup> Therefore, if a National Guard member has another full-time CalPERS position, no additional compensation or service credit could be earned for National Guard service. If a National Guard member has another **part-time** CalPERS position, National Guard membership may be established, but the total service credit received for the two positions may not exceed one year of service credit per fiscal year. (20635)

### **FUTURE ACTIONS:**

CalPERS and the Military Department are working out the procedures for (1) electing membership as a National Guard member, (2) making regular contributions to CalPERS after making this election, and (3) making a request to purchase credit for previous California National Guard service. We are also drafting a publication to provide information specifically for California National Guard members. These additional sources of information should be available soon; check CalPERS On-Line for the latest information.

We encourage you to visit CalPERS On-Line ([www.calpers.ca.gov](http://www.calpers.ca.gov)) for most of your questions. For any additional questions, employers, members or potential members of CalPERS may call CalPERS at **888-CalPERS** (or **888-225-7377**), between the hours of 8 a.m. and 5 p.m.

Lori McGartland, Chief  
Employer Services Division

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<sup>1</sup> Generally, “Final Compensation” is a member’s highest monthly pay rate for a consecutive 12 month or 36 month period. Final Compensation is one of the three basic factors (in addition to service credit, and a Benefit Factor based on age at retirement) used to calculate a CalPERS pension.

<sup>2</sup> “Overtime” is defined as being service in excess of “full-time” service. (20635)